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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

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No. 663

MOURNING JONES,

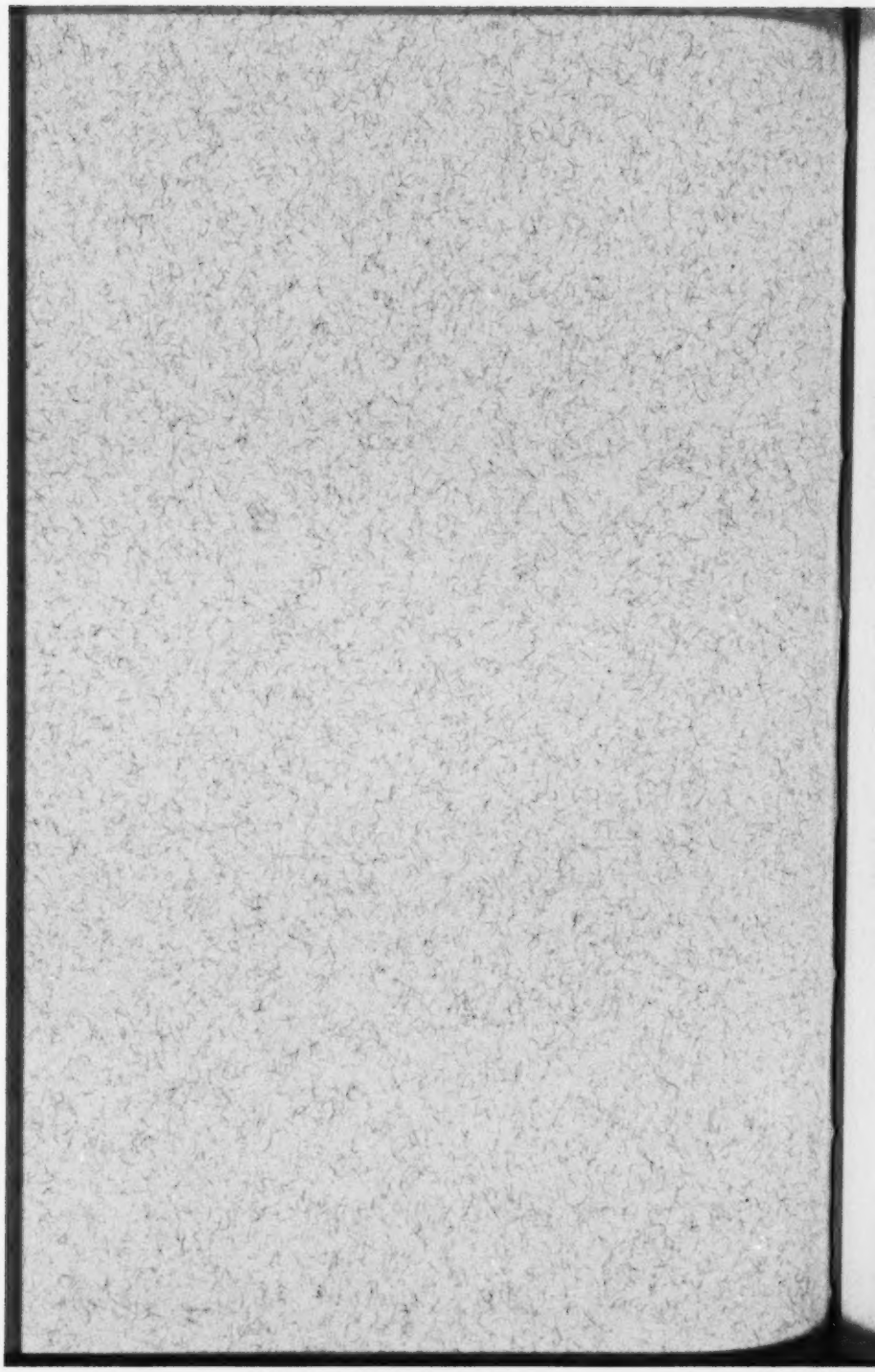
Petitioner,

vs.

CITY OF ARCADIA, A MUNICIPAL CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

H. G. JONES,
W. D. BELL,
Arcadia, Florida,
Counsel for Petitioner.



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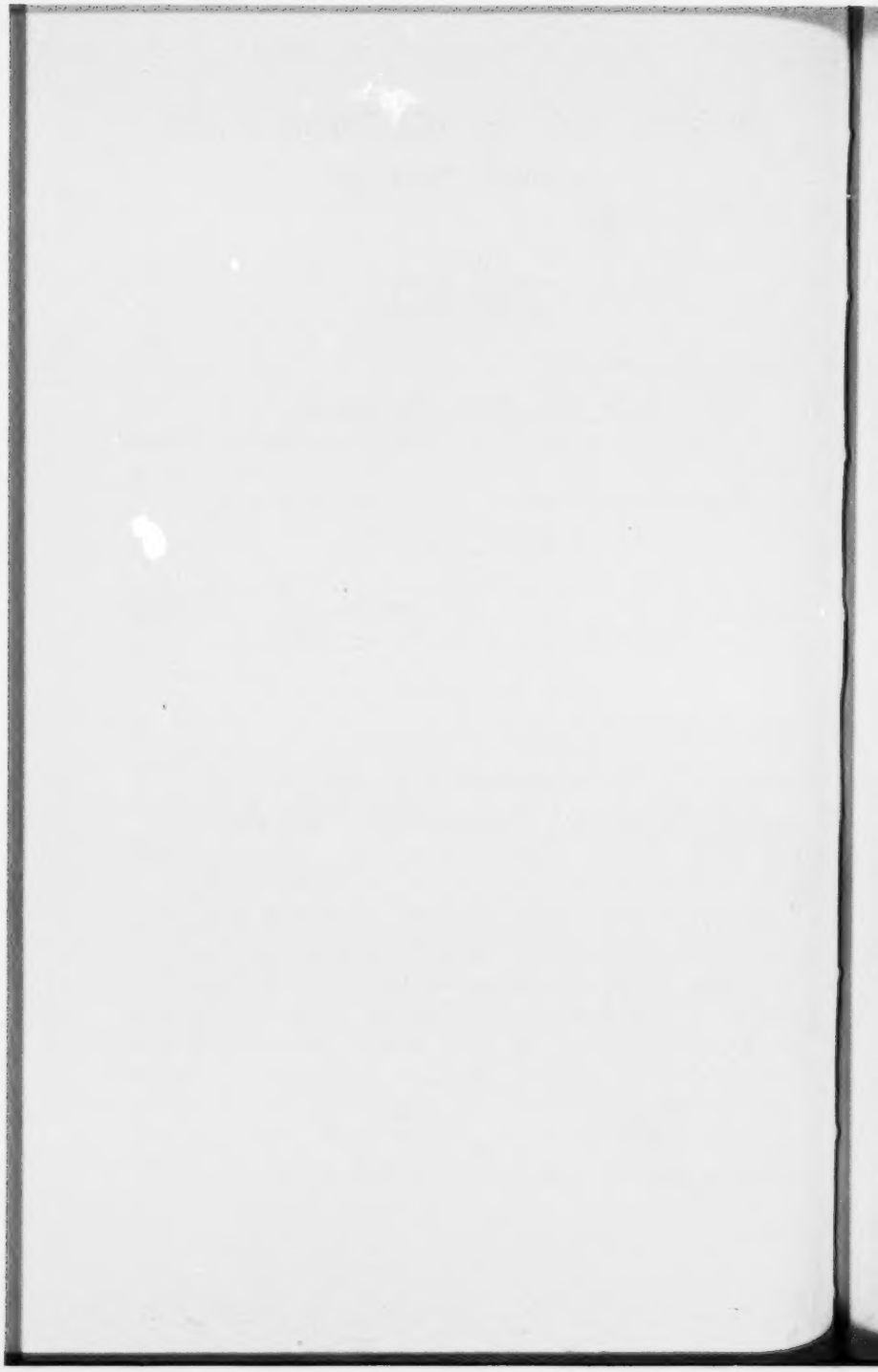

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 663

MOURNING JONES,

Petitioner,

vs.

CITY OF ARCADIA, A MUNICIPAL CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

To the Honorable the Supreme Court of the United States:

The petition of Mourning Jones respectfully shows to this Honorable Court:

I.

Two suits were filed by the City of Arcadia in the Circuit Court of De Soto County, Florida, against petitioner to foreclose certain purported tax liens (R. 1-4, 5-8) and motions were made by petitioner to dismiss the bills of complaint therein (R. 9-10, 11-12). These cases were consolidated by order of court and the motions to dismiss were denied and overruled (R. 15). Thereupon petitioner filed her answer (embodying counterclaim and motions to dismiss) (R. 16-24), and the City filed its motions to dis-

miss her counterclaim and to strike her motion to dismiss contained in her answer (R. 24-25), which motions of the City were sustained (R. 26). The counterclaim in the answer of petitioner, dismissed by order of court, alleged that "Each and every of the tax in the consolidated bills of complaint is void because: The due process of law provisions of the Constitution of Florida and of the United States of America have not been complied with," and enumerated particularly wherein such due process clauses had been violated (R. 18-23). Thereupon petitioner refiled her answer embodying an amended counterclaim (R. 26-38), and the City filed motion to dismiss her amended counterclaim (R. 40-41), which motion was sustained by the court (R. 41-42), and the amended counterclaim dismissed. Testimony was taken (R. 57-100), and evidence offered by appellant to show lack of due process was stricken by the court without consideration (R. 74-94) and the court entered a final decree against petitioner December 12, 1940 (R. 102-104). Petitioner then appealed to the Supreme Court of Florida (R. 106-109), which court entered its judgment June 27, 1941, affirming the judgment of the Circuit Court (3 So. 2nd 338) (R. 123-136).

II.

Petitioner represents that in each of said stricken pleadings she duly alleged with reference to the purported tax liens: (1) complete absence of Charter-required notice of equalization hearing, (2) complete absence of legal equalization hearings in each of said years, (3) complete absence of official records evidencing such notice or such hearings, (4) complete absence of jurisdiction of the subject matter for the purpose of taxation, and (5) complete lack of uniformity in the purported tax, all of which matters constituted a lack of due process of law. Petitioner further urged that the purported assessments were not made by

the tax assessor as required by Section 8 of Chapter 5080, Acts of the Florida Legislature of A. D. 1901, but purport to have been made by a City Recorder, and as to certain years, by a citizen's committee, persons without official jurisdiction to assess taxes and wholly unknown to the law. Petitioner further represents that the Circuit Court did not hear her in said issues of lack of due process but struck her pleadings raising such issues, and thereby denied her the right of a hearing on valid issues in contravention of Section 1 of the 14th Amendment to the Constitution of the United States, all of which matters were duly assigned as error in the Supreme Court of Florida (R. 88-120), and said Supreme Court affirmed the judgment of the Circuit Court upon the false hypothesis that, although petitioner was denied due process in the matter of the obtaining of the purported tax liens, that she was afforded due process by this foreclosure action, in which her pleadings were stricken and her proof had nothing to which it could apply.

III.

Your petitioner represents that she is advised and believes and thereupon avers it to be a fact that the said judgment of the Supreme Court of Florida is erroneous in this to-wit:

The Supreme Court of Florida (*Jones* v. *City of Arcadia*, 3 So. 2nd Series, Text 339, column 1, division #2) (R. 123-136) concedes that there were irregularities in all the instant assessments that, if not duly cured by appropriate proceedings, "were sufficient to constitute a lack of due process of law" and that the two curative acts referred to did not cure any irregularities amounting to lack of due process of law; but the Supreme Court of Florida held that this lack of due process of law was cured by this tax foreclosure suit and affirms that opportunity was given this defendant

to be heard on the merits of the instant tax claims despite the fact the lower court (1) struck this defendant's counterclaim and amended-counterclaim, both setting up defendant's defense against said purported tax liens; and (2) despite the fact that the record discloses that all of appellant's testimony showing lack of due process of law (R. 74-94) was stricken without consideration and that the hearing of this defendant on the merits of said tax claims had been stricken and denied without consideration.

Petitioner further represents that the decision of the Supreme Court of Florida in reference to the above matters denied her due process and equal protection of law as therein specially set up or claimed by her under the Constitution of the United States; and the Supreme Court of the United States has jurisdiction to review said decision by virtue of section 1 of the 14th amendment to the Constitution of the United States and section 344 (b), Title 28, U. S. C. A., and Rule 38 of this Honorable Court.

IV.

A certified copy of the entire record of said case in said Supreme Court of Florida is hereby furnished, attached to and made a part of this application and marked Exhibit A.

V.

Wherefore your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court directed to the Supreme Court of Florida commanding the said court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the Supreme Court of Florida in the said case entitled *Mourning Jones* v. *City of Arcadia, a Municipal Corporation,* to the end that said case be reviewed and determined by the Court as provided by the rule of this Court and the stat-

ute in such case made and provided, or that your petitioner may have such other or further relief or remedy in the premises as this Court may deem appropriate and in conformity with the said rules of this Court and said statutes, and that the said judgment of the Supreme Court of Florida in the said case, and every part thereof, may be reversed by this Honorable Court.

MOURNING JONES,
Petitioner.

STATE OF FLORIDA,
County of De Soto:

Mourning Jones, being duly sworn, says that she is the petitioner above named; that she has read the foregoing petition and that the same is true, excepting as to matters therein stated to be alleged on information and belief, and matters of law therein alleged, and as to those matters she believes them to be true.

MOURNING JONES.

Sworn to and subscribed to before me at Arcadia, Florida, this 22 day of September, 1941.

[SEAL.]

R. B. ARMSTRONG,
Justice of the Peace, District #1, De Soto County, Florida.

BRIEF.

The Supreme Court of Florida conceded that in the case at bar appellant had been denied due process of law in the matter of the assessment and collection of the purported tax, but held that due process had been afforded her by the notice in the Circuit Court in the foreclosure proceedings of the purported tax liens.

Jones v. *City of Arcadia*, 3 Co. 2d, 338.

But judgment even with notice, without a hearing, is a denial of due process. All of appellant's pleas in the lower court in which matters of due process were brought in issue and all evidence that would have supported them were stricken by the Circuit Court.

Double acute injustice appears herein because no charter-required notice of equalization was given and no legal equalization hearing, in any of the tax years, was held; hence no jurisdiction of the *res* was acquired and, now, on this foreclosure that is supposed to overcome that lack of due process and want of jurisdiction, the appellant's defense (counterclaim and amended counterclaim), setting up the admitted lack of due process of law, is stricken. (When the *allegata* was stricken there was nothing left to justify the *probata* and it was also stricken.)

We quote from the dissenting opinion of Justice Chapman in the above case:

> "The striking of the counterclaim which set up the foregoing defenses, deprived the appellant of the right and privilege of offering testimony in support thereof."

The Supreme Court of the United States in the case of *Windsor* v. *McVeigh*, 93 U. S. 274, 277, 23 L. Ed. 914, said:

> "A sentence of a Court, produced against a party without hearing him or giving him an opportunity to

be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal."

* * * * * * *

"It is difficult to speak of a decree thus rendered with moderation; it was in fact, a mere arbitrary edict, clothed in the form of a judicial sentence."

The Supreme Court of the United States in the case of *Hovey* v. *Elliot*, 167 U. S. 409, 42 L. Ed. 215, 220, 221, discussing the striking of an answer from the files, and holding the same to be a denial of due process of law, says: (Text 220)

"The fundamental conception of a Court of justice is condemnation only after hearing. To say that Courts have inherent power to deny all right to defend an action and to render decrees without any hearing whatever is, in the very nature of things, to convert the Court exercising such an authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends."

* * * * * * *

(Text 221)

"Can it be doubted that due process of law signifies a right to be heard in ones defense? If the legislative department of the government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the Constitution? If this be true, as it undoubtedly is, how can it be said that the judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution. If such power obtains, then the judicial department of the government sitting to uphold and en-

force the Constitution is the only one possessing a power to disregard it. If such authority exists then in consequence of their establishment, to compel obedience to law and to enforce justice, Courts possess the right to inflict the very wrongs which they were created to prevent."

It therefore follows that the court in striking the pleas of appellant was exercising jurisdiction beyond its legitimate scope and was depriving the appellant of due process of law contrary to the Declaration of Rights of the Constitution of Florida and the Fourteenth Amendment to the Constitution of the United States. And the Supreme Court of Florida by affirming the judgment of the lower court approved the striking of appellant's pleas. The appellant is, therefore, entitled to certiorari and a reversal of the verdict and judgment of the Supreme Court of Florida.

H. G. JONES,
W. D. BELL,
Of Counsel for Petitioner.

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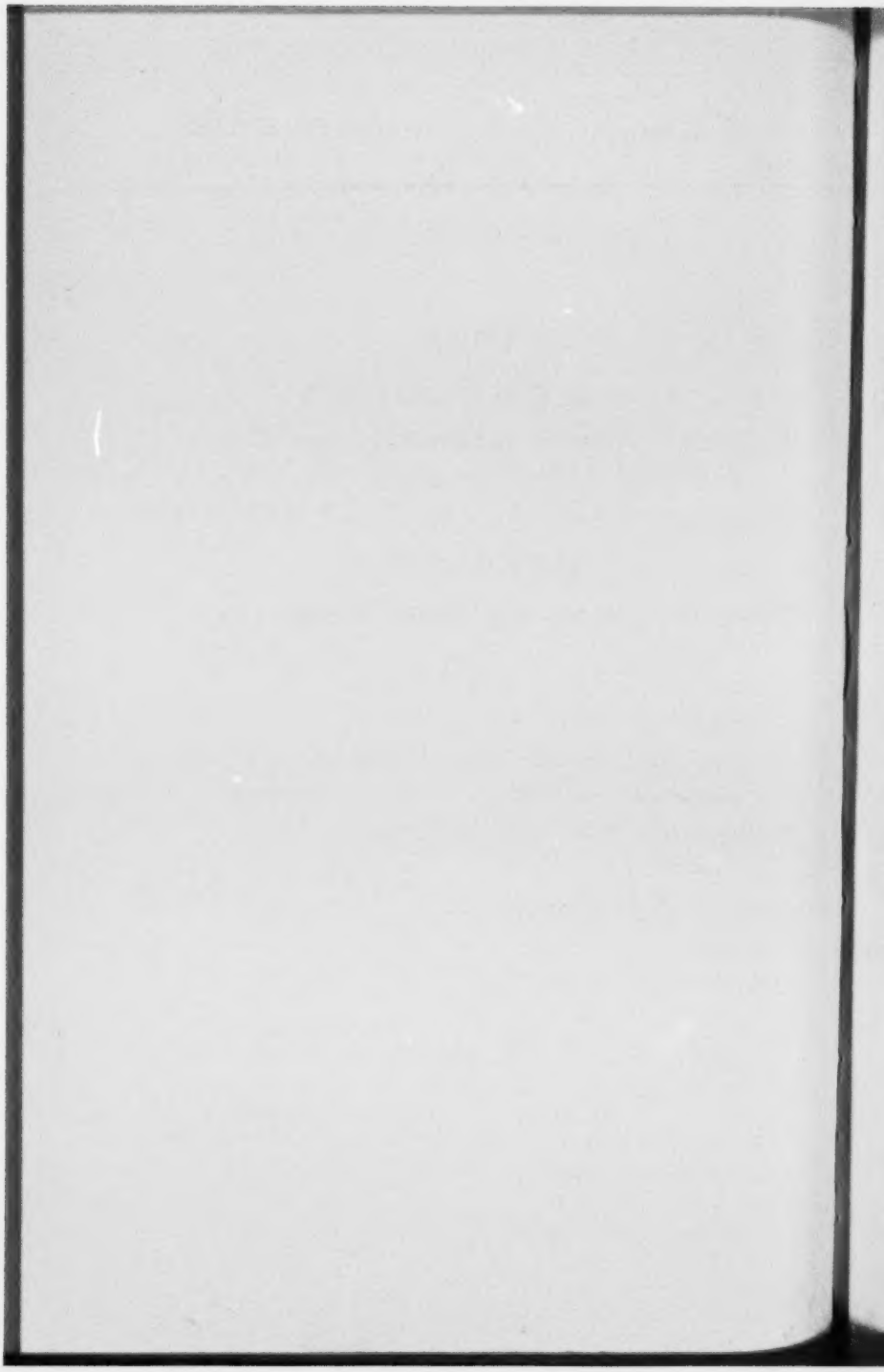


SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

No. 663

MOURNING JONES,

Petitioner

vs.

CITY OF ARCADIA,

A Municipal Corporation

REPLY BRIEF OF THE CITY OF ARCADIA TO PETITION FOR WRIT OF CERTIORARI

The contention of the Petitioner is that she was denied due process of law, contrary to the Constitution of the United States, in that the Chancellor struck her tendered counter-claim as incorporated in her answer.

The suit in this matter is a chancery suit, brought by the City of Arcadia, a municipal corporation, against the Petitioner and others, to foreclose tax liens against certain property situate in the City of Arcadia, assessed yearly for the years 1926 to 1936 both inclusive (1 and 2 tr.). The Petitioner filed an answer to this bill and in that answer she incorporated a counter-claim. The answer proper amounted to nothing but a denial that counsel who then represented the City of Arcadia had authority to institute the suit. The Chancellor struck parts of this answer. The entire counter-claim incorporated in the answer was stricken by

the Chancellor because, among other things, there was no equity in the counter-claim.

Chancery procedure in Florida says:

> "(1) When counter-claim must be stated in answer: The answer must state, in short and simple form, any counter-claim arising out of the transaction which is the subject matter of the suit, and may, without cross bill, set out any counter-claim against the plaintiff which might be the subject of an independent suit in equity against him; and such counter-claim so set up shall have the same effects as a cross suit, so as to enable the court to pronounce a final decree in the same suit on both the original and the cross claims.
>
> "(2) Prayer for relief: If the answer contains a counter-claim, appropriate special relief shall be expressly prayed in respect to the counter-claim, otherwise the answer shall be regarded as defensive only; but such prayer for special relief shall also be held to conclude any relief grantable under a prayer for general relief."

This counter-claim fell far short of meeting the requirements of a cross bill, the said counter-claim (18 tr.) in substance says:

(1) That due process of law provisions of the Constitution of the State of Florida and the United States of America have not been complied with in the making of said assessments in that:

(A) The City of Arcadia has never received from the City Tax Assessor a complete assessment roll . . . . at its first meeting in June of any of the assessment years, and has never thereafter reviewed, corrected and equalized the assessment roll, etc.

This part of the counter-claim in substance, is that the

City Council did not receive the assessment roll at its first meeting in June, and never thereafter **legally** reviewed, corrected and equalized any of the assessments. This is a mere matter of procedure and could be corrected and was corrected by special acts of the Legislature, as hereinafter shown. This part of the said counter-claim was stricken and should have been stricken.

(B) Not one of the said assessments has been **legally** reviewed, **legally** corrected and **legally** equalized.

This allegation of the counter-claim amounts to nothing as it fails to state facts. All it states is a conclusion of the pleader, to-wit, "legally," and of course should have been stricken.

(C) Not one of the assessment rolls has been reviewed, corrected and equalized **according to law.**

"According to law" is a mere conclusion of the pleader and states no facts and should have been stricken.

(D) The owner of the property has never been given a **fair and reasonable** notice . . . . for the purpose of making and receiving complaints from the owner of the said property on any of the said assessments.

"Fair and reasonable" notice is a mere conclusion of the pleader. This should have been stricken.

(E) **The notice required by law** has never been reasonably given and has not been given so as to have the books, etc., at the meetings of the City Council for the purpose of reviewing the assessments.

This part of the counter-claim recognizes that notice was given and if a notice was necessary and some notice was given, such defect could have been corrected by corrective statutes. See Taylor etc. v. Tennessee and Florida Land etc. Co. 71 Fla. 651, 72 So. 206, so this part of said counter-claim should have been stricken.

(F) There is no record in the minutes of the action

of the Arcadia City Council during this time that evidences notice of a meeting to equalize the assessment to owners of property. In short, the minutes of the City Council of the City of Arcadia are defective.

This defect could certainly have been cured by an act of the Legislature and it was so cured, as shown hereafter, and so this part of the counter-claim should have been stricken.

(G) The tax rolls for the years 1926 to 1932 both inclusive were not **legally** reviewed, corrected, etc. by the City Council, and no **legal** notice of any meeting was given for the purpose of correcting and equalizing the assessment roll for the said years.

"Legal notice" is a conclusion of the pleader and furthermore, if any notice was given, which is admitted by the answer, and the said notice did not exactly conform to the notice required, such defect could be cured and was cured by special act of the Legislature as hereinafter shown, and this part of the counter-claim should have been stricken.

(2) The tax rolls for the years 1926 and 1927 were prepared by a committee of citizens appointed by the City Council and this committee raised the valuation of the property in the City and thereafter the tax assessor continued to place a fictitious valuation upon the said property even down through the year 1935.

Section 19 of Chapter 6323 Acts of the Florida Legislature for 1911, gave the City Council of Arcadia authority to appoint some person to make the assessment when the assessor was disqualified, which was done in this case, and as to the valuation of the property by the tax assessors in succeeding years, such defect as to valuation could be cured by the Legislature and was so cured, as hereinafter shown, and this part of the counter-claim should have been stricken.

(3) For the year 1926 no property was assessed at its true value and the property involved in this suit was assessed at many times its true cash value.

Such defects as this, if they existed, could have been and were corrected by acts of the Legislature as hereinafter stated, and this part of the counter-claim should have been stricken.

(4) The assessment roll for the year 1927 was not presented to the City Council of Arcadia for the purpose of reviewing until sometime in December 1927 and the minutes do not show any legal meeting of the City Council.

This procedure could be cured, and if it was defective at all, it was cured by the acts of the Legislature as hereinafter shown, and this part of the counter-claim should have been stricken.

(5) No **legal** assessment roll was prepared for the City of Arcadia for the years 1926 and 1927, but the assessment rolls are a mass of typing, erasures, striking out and writing over again with pencil so that it is impossible to tell what assessment was made, and that the City auditor's report shows a conglomerated mass of errors and that the City Tax Assessor resigned as a matter of necessity and no **legal** assessment was made against said property.

This allegation amounts to nothing. "No legal assessment" is merely a conclusion of the pleader. If there was any defect at all, it was in procedure such as copying of the minutes, etc., and all such defects can be and were cured by the acts of the Legislature as hereinafter shown, and this part of the counter-claim should have been stricken.

(6) The tax assessor of Arcadia did not complete the 1927 tax roll during 1927, did not present the said tax roll to the City of Arcadia during 1927 and the tax roll was not equalized during 1927 and no **reasonable or lawful**

notice to tax payers to receive complaints was given by the City of Arcadia.

The first part of this is merely procedure and could have been corrected and was corrected by acts of the Legislature as hereinafter set forth, and as to "reasonable or lawful" notice, this is merely a conclusion of the pleader and of course the Chancellor struck this part of the counter-claim.

(7) The Petitioner alleges that the assessment of the property as made revealed a **lack of uniformity** in valuation and a lack of equality in rate of taxation as compared with different portions of the property and of other property in the City of Arcadia.

"A lack of uniformity" of course did not deprive this Petitioner of her property without due process of law. This could have been corrected and was corrected by act of the Legislature as hereinafter set forth; and furthermore, if the valuation was defective, this part of the counter-claim should have set forth the true value of the property and should have tendered the correct amount of taxes to the court, which the Petitioner did not do, and of course that part of the counter-claim was stricken.

(8) This part of the counter-claim says that the delinquent taxes were not placed in the hands of an attorney for collection year by year, and that on several occasions assessment rolls were handled by the attorney en mass, by several individuals who purported to be acting as attorneys for the City of Arcadia in collecting taxes, and that the attorneys who are now acting, are acting under blanket orders covering several thousand delinquencies that extend for many years back, and out of these delinquencies only a small number of suits have been instituted and that these attorneys are not uniformly bringing suits.

This part of the counter-claim amounts to nothing. It is within the discretion of the City Council to bring suits to

foreclose delinquent taxes on any property it desires. It looks like the City has been very lenient in regard to the property of Petitioner in that no suit has been filed prior to this, and her taxes have been allowed to run for ten years without molestation. Of course, that part of the counter-claim should have been stricken.

(9) This seems to be a **development** to the effect that the property has remained in status quo from 1926 until the present time and that the assessments from 1926 to 1936 upon the said property for each year varied and that the valuation depends greatly on the "Florida Boom of 1925."

This part of the counter-claim sets up no defense and of course the court should have and did strike this part of the counter-claim.

(10) This part of the counter-claim seems to say that no personal property was assessed for the years 1926 to 1932 nor was any payment made on intangible property during that time; and that because there was no personal property assessment this reacted to the injury of the Petitioner.

This part of the counter-claim sets up no cause for relief. This allegation amounts to nothing. If it did constitute a defect in the assessment, such defects were cured by the acts of the Legislature as hereinafter set forth and this part of the counter-claim should have been stricken.

(11) This part of the counter-claim says that the City of Arcadia and the City Council did not have any **legally** executed records covering the subject matter of taxation.

"Legally" is a mere conclusion of the pleader and of course that should have been stricken.

OTHER TAXES PAID

The Petitioner says in this part of her answer that she has paid all of the County and State taxes on all of her property and that she would like to pay all the City taxes that are legal taxes, provided she is given ample time to pay those taxes.

This constitutes no defense. If there were any legal taxes, she should have tendered to the court the amount of those legal taxes, and this she did not do, and of course, the Chancellor struck this part of the answer.

The property involved in this suit is in the City of Arcadia. The City of Arcadia had authority to levy taxes for municipal purposes. Chapter 6323, Laws of Florida, Acts of 1911. All of the above so called defects, if any there were, were irregularities in the assessment of taxes for some of the years between 1926 and 1936, which irregularities were cured by special acts of the Legislature of 1933, Chapter 16309 and by Special Acts of the Legislature of 1939, Chapter 19683. All of these laws were enacted for the purpose of correcting such irregularities as are pointed out by the said counter-claim.

The counter-claim as found in the answer admitted that the property involved in the suit was situate in the City of Arcadia; that said property was subject to taxation, and was assessed, but was irregularly assessed. The Chancellor took judicial cognizance of the fact that the said irregularities as pointed out by the said counter-claim had been cured by the said Special Acts of the Legislature of the State of Florida, and dismissed the said counter-claim.

Furthermore, the counter-claim admitted that some of the taxes were regular, but the counter-claim failed and refused to offer to do equity by tendering to the court the amount of taxes which the petitioner admitted to be correct. Florida has held that to be a prerequisite to any relief. Order granting temporary injunction restraining collection

of excess taxes, conditioned on payment of legal taxes into court before becoming effective, was not such an improvident exercise of judicial discretion as to render the order erroneous under Compiled General Laws of Florida, 1927, 1038-1040. Louisville etc. R. Co. v. Amos 98 Fla. 350, 123 So. 745.

As our supreme court, speaking through Judge Buford, in its opinion in this cause said, in substance,—the Petitioner was in a chancery court and if she had any defense which was not cured, she should have set up that defense. The defense that she attempts to set up amounts to nothing but irregularities which were cured by the said Acts of the Legislature, and the defenses which the Petitioner had attempted to set up in her counter-claim were illegal and insufficient and the Chancellor properly struck the said answer.

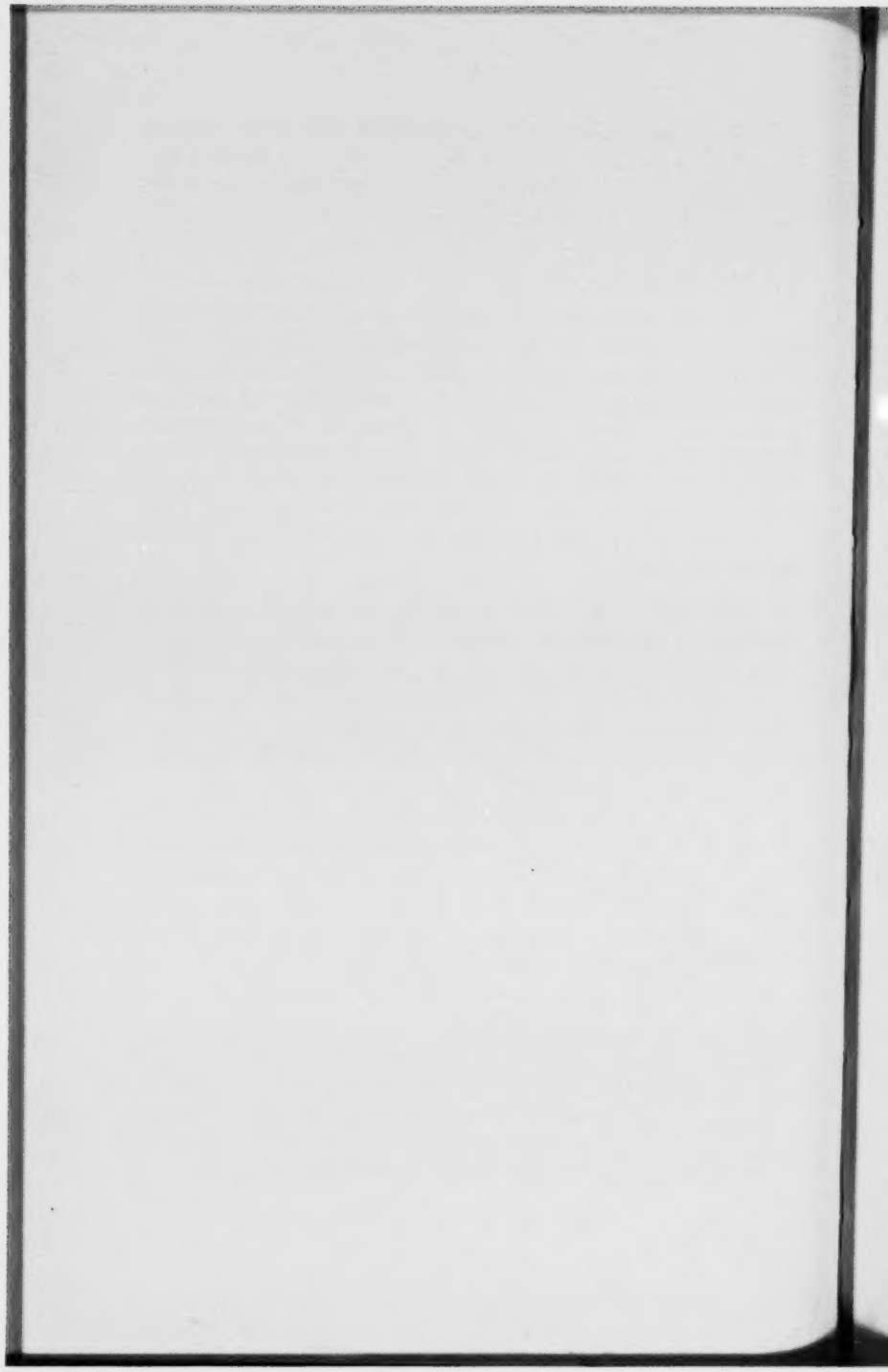
WHEREFORE the City of Arcadia asks that the said petition for certiorari be denied.

All of which is respectfully submitted.

R. W. Shackleford

Sidney T. Sistrunk

Counsel for City of Arcadia,
a Municipal Corporation.



FILED
DEC 13 1941
CHARLES ELMORE CROPLEY
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MOURNING JONES,

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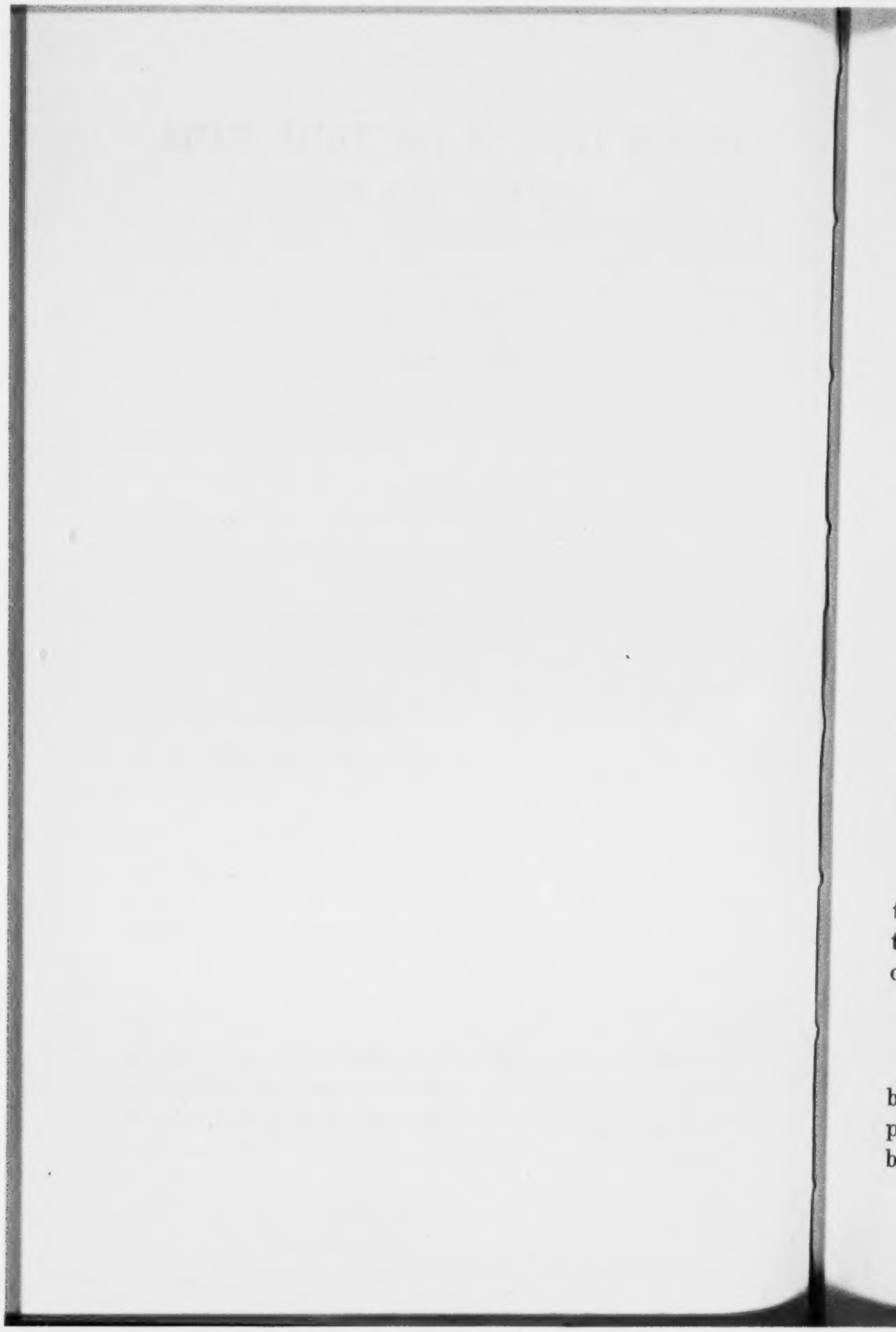
vs.

CITY OF ARCADIA, A MUNICIPAL CORPORATION.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA.

PETITION FOR REHEARING.

H. G. JONES,
W. D. BELL,
Counsel for Petitioner.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

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MOURNING JONES,

Petitioner,

vs.

CITY OF ARCADIA, A MUNICIPAL CORPORATION.

PETITION FOR REHEARING.

To the Honorable the Supreme Court of the United States:

Your Petitioner, Mourning Jones, files her petition for rehearing and says:

I.

That the City of Arcadia recognized the right of Petitioner to a writ of certorari and by its stipulation filed in this cause consented to a hearing upon the merits. (Copy of Stipulation attached hereto.)

II.

That the City of Arcadia, responding to the merits, by its brief, admitted that the matters urged and set forth in the petition duly presented the issue of a lack of due process, but argued that the stricken pleas referred to therein were

properly stricken in that raised no issue cognizable by a Court of Equity.

III.

That Petitioner through her counsel thereupon began to prepare her brief showing that her stricken pleadings did contain equity and did raise the issue that the Petitioner was denied due process of law, and that the striking of said pleas prevented her from being heard on such issue, and thereby denied her due process as set forth in her petition.

IV.

That when Petitioner had prepared her brief upon the merits and was ready to submit it to the Court, she received notice that the Court had denied her writ.

V.

The brief filed by the City of Arcadia deals exclusively with Florida statutes and Supreme Court decisions, upon which counsel for City place their interpretation; upon this interpretation Petitioner takes issue. Therefore, under the circumstances, it is essential to a just and legal disposition of this case that petitioner be heard upon such issues.

VI.

The issues involve matters of great public interest, affecting the public policy and welfare of the people of the entire State of Florida in matters of taxation, in that a precedent has been set, unless relief is granted by this Court, whereby an illegal tax may be enforced without any hearing, and the very forum designed to afford due process may strike the defense and deny such hearing.

VII.

Petitioner, according to the record herein, having exhausted her efforts to deflate these taxes from the assess-

ments that by the record herein were admitted by the City of Arcadia to be inflated by the Florida real estate boom, and the City of Arcadia having met Petitioner's efforts to pay taxes through reasonable compromise by only a slight reduction that left the property assessed at several times the assessable value thereof, (as admitted by the City of Arcadia by its 1936 assessment), this Petitioner was forced into the Florida Courts for settlement according to legal principles. And Petitioner, a widow in her 74th year, has been deprived of a hearing on the merits by the Courts of Florida, in contravention of Section 1 of the 14th amendment to the Constitution of the United States. She has gone to much expense to present her case to this Court, and she believes she should be permitted to file her brief in reply to that of the City of Arcadia; for she has no recourse to defend her constitutional guarantee to due process of law except in this Honorable Court.

The premises considered, Petitioner prays that said cause may be reheard and that she may be permitted to file her brief, a copy of which is herewith tendered, and that upon such rehearing being granted that the same may be set for oral argument before the Court; and that Petitioner may have such other, and further remedy in the premises as to this Court shall seem meet.

H. G. JONES,
W. D. BELL,
Attorneys for Petitioner.